

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CARYL VONDRA, Personal Representative of)	
The Estate of Melvin Vondra,)	Case 8:07-cv-85
)	
Plaintiff,)	
)	
v.)	
)	MOTION TO DISMISS
GOODYEAR TIRE AND RUBBER CO.,)	
)	
Third Party Plaintiff,)	
)	
v.)	
)	
BARTON SOLVENTS INC., CHEVRON)	
USA, INC., CITGO PETROLEUM CORP.,)	
MCKESSON CORPORATION, SHELL)	
CHEMICAL LP, D/B/A SHELL CHEMICAL CO.,)	
SHELL OIL CO., UNION OIL COMPANY OF)	
CALIFORNIA D/B/A UNOCAL CORP.,)	
)	
Defendants.)	

COMES NOW Defendant CITGO Petroleum Corporation (hereinafter "CITGO"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, by and through its attorneys, and hereby moves this Court to dismiss the above-captioned matter in its entirety with prejudice as time barred by the statute of repose, Neb. Rev. Stat. §25-224(2)(a), and in support of said motion, states as follows:

1. Plaintiff's Amended Complaint alleges various "product liability actions," as the term is defined at Neb. Rev. Stat. §25-21,180, against CITGO, and all other Defendants, arising out of the Decedent Melvin Vondra's alleged exposure to benzene and benzene-containing products while employed by Goodyear Tire and Rubber Company (hereinafter "Goodyear") from 1966 to 1995.

2. The Nebraska Statue of Repose, Neb. Rev. Stat. §25-224(2)(a), requires that any product liability action be brought within ten years of when the allegedly harmful product was first sold.
3. Plaintiff did not file the present suit until July 26, 2006, more than ten years after the last possible date on which the products to which Decedent Melvin Vondra was allegedly exposed could have been first sold.
4. Plaintiff's claims are therefore time barred under the Nebraska Statute of Repose, Neb. Rev. Stat. §25-224(2)(a).
5. In support of its Motion to Dismiss, CITGO hereby adopts by reference the briefs in support of identical Motions to Dismiss filed by Chevron USA, Inc., et al., Filing No. 20 and Barton Solvents, Inc., Filing No. 28.

WHEREFORE, CITGO respectfully requests that the Court grant its Motion to Dismiss and enter an order dismissing Plaintiff's Amended Complaint in its entirety with prejudice pursuant to Fed.R.Civ.P. 12(b)(6).

DATED this 20th day of April, 2007.

CITGO PETROLEUM CORPORATION, Defendant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of April, 2007, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system which sent electronic notification of such filing to all CM/ECF participants.

/s/ Donald P. Dworak
Donald P. Dworak